

(2000) 04 CAL CK 0002

In the Calcutta High Court

Case No : W.P No. 4745 (W) of 1998 and 16333 (W) of 1999

Rajat Kanti Aditya

APPELLANT

Vs

Collector, Land Acquisition

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 6

Citation : (2000) 04 CAL CK 0002

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : A.K. Ghosal and Chandramala Mukherjee, for the Appellant; Soumen Mukherjee and Swapan Kumar Pal for State and S.N. Mukherjee, Ashoke Das Adhikari, Dipayan Adhikari, S.C. Ukil and Chhabi Das, for the Respondent

Final Decision : Dismissed

Judgement

Basudeva Panigrahi, J.—In this case, the Petitioner who was a purchaser measuring about 1 biggha of land in C.S. Dag No. 3622, Khatian No. 940 of Purba Barisa mouza has questioned the validity, legality and propriety of the notification issued u/s 6 of the Land Acquisition Act, 1994 vide Annex. "H" to the writ petition.

2. The factual matrix leading to filing of this case is as follows:

The Petitioner had purchased 1 biggha of land in plot No. 3622 for a valuable consideration from the erstwhile owner Birendranath Bhar by a registered Deed of Conveyance dated February 17, 1967. From then on he has been in possession of the said land and paying rent to the State of West Bengal. It has been alleged that the Respondent No. 6 who is a private institution run by 1, Dr. Saroj Gupta had exerted much influence on the Government official, under the false pretext of public purpose although such acquisition will neither benefit the public at large nor even to any section of public. The Respondent No. 6 who is managing the hospital and research work for Cancer has been charging different

rates for the treatment of Cancer patient which is at par with any renowned nursing home or private hospital of the city. The treatment of the patients is being catered in exchange of lucrative sum and the Respondent No. 6 is being engaged by earning huge profits.

3. The Respondent No. 6 is also found to have indulged and grabbed the different parcel of land lying near about or adjacent to his research centre by exercising tremendous influence on political bigwigs. The Petitioner has also illegally erected hedges and fences. Immediately after the Petitioner having come to know about such illegal activity of the Respondent No. 6, he filed a suit for declaration, recovery of possession and injunction. In the 7th Court of the Civil Judge (Senior Division), Alipore being Title Suit No. 331 of 1997, inter alia, moved an application for temporary injunction against the secretary of the Respondent No. 6 and obtained an order from the Court against the Respondent No. 7 for directing him to maintain status quo till the disposal of the injunction matter.

4. The Respondent No. 6 had preferred an appeal in this Court but this Court also did not like to interfere, save and except, directing the Trial Court to expedite the hearing of the suit. In the meanwhile the Petitioner filed this case for declaration of the notification issued u/s 6 of the Land Acquisition Act, 1994 illegal, unlawful and unenforceable.

5. The adjacent land in plot Nos. 3619, 3622 (part), 3623, 3624 (part) and 2632 of Khatian No. 940 in Purba Barisha mouza was acquired by the West Bengal Housing Board but those lands were derequisitioned as the Housing Department was no longer interested to utilise the said land. Immediately thereafter, the Respondent No. 6 approached the authorities and got those lands acquired by invoking the provisions of Section 17(1), Act (I) of 1894. The acquisition collector also published a notice in exercise of powers conferred by Sub-Section 4 Section 17 of the Acquisition Act, 1894 and the Governor was pleased to direct that the provisions of Section 5A was dispensed with under emergency power. On May 3, 1996, again another notification was issued u/s 6 of the Act wherein it was stated that the Governor was satisfied that the land was needed for public purpose for the expansion of the Cancer Hospital and Research Centre. It was, however, affirmed in the affidavit-in-opposition that the land in question was delivered to Respondent No. 6 October 11, 1996. It has been stated by the Petitioner that such Act for invoking the emergency provision was nothing but merely a colourable exercise of power. It has been further mentioned by the Petitioner that the Cancer Research Centre and Welfare Home is having better economic viability to undertake any development or expansion of the Centre by purchasing any land or taking a land under the Government on lease basis. The said Centre has adequate funds and also may be able to secure adequate funds by accepting donation which they are collecting from different sources. There was no real urgency in the matter and the Respondent authorities would have given the Petitioner an opportunity to contest that the land was not really needed for any public purpose. They had shut cut the Petitioner's opportunity to

ventilate his grievance by making a notification u/s 17(4) of the Act. From the notification it has further transpired that the authorities did not apply their mind while publishing the said notification and also for dispensing with the Section 5A of the Act.

6. The notification dated February 14, 1995, has made it clear that the land was likely to be needed by the Government at the public expense and partly at the expense of Cancer Centre for a public purpose viz. for expansion of Cancer Centre and Welfare Home at Thakurpukur and the said notification further provided that it was made in exercise of powers conferred by Sub-Section 4 of Section 17 of the Land Acquisition Act, 1894. The Governor was pleased to direct that the provisions of Section 5A of the Act was not applicable to the land as described in the schedule to the notification to which the opinion of the Governor, the provisions of Sub-Section 1 of Section 17 of the said Act are applicable. In the notification there has been no recording of the satisfaction of the Governor about the declaration made u/s 6 dated May 2, 1996. The conduct of the State official was not free from blemish and it was malafide inasmuch as the land was acquired in the name of public-purpose though it has been acquired for the benefit of Respondent No. 6 which is a private institution. The notification dated February 14, 1995, was published on March 30, 1995, and the subsequent declaration dated May 2, 1996, was published on May 3, 1996. Since the declaration was not published immediately, the exercise of power u/s 17(1) dispensing with the enquiry u/s 5A of the Act is completely bad in law as it indicated that there was no real urgency. The possession of the land was also taken after 5 months from the date of declaration and without any enquiry u/s 5A and also without payment of compensation required to be given to the Petitioner.

7. It has been stated in the affidavit-in-opposition filed by Respondent Nos. 1 to 5 that the record-of-right in Dag No. 3622 of Purba Barisha mouza is still laying in the name of Dhirendranath Bar and Birendranath Bar. The land was acquired for the purpose of expansion of Cancer Centre and Welfare Home at Thakurpukur after having it considered by the Government, Health and Family Welfare Department that such acquisition was necessary for the purpose of expansion of the Cancer Centre which would mainly help the mankind. The question of the influence by Respondent No. 6 is said to be unfounded and imaginary and such allegation has been made to embroider the case of the Petitioner.

8. The first gazette notification was published on March 13, 1995, and final notification was made on May 3, 1996. A notification u/s 4 of the Act was published through the secretary of the Respondent No. 6. It was acquired for the development of the housing estate but subsequently they did not need to have such land. Therefore, it was derequisitioned and given to the Respondent No. 6 for its expansion. Notices was issued in the name of Birendranath Bar and Dhirendranath Bar since there was no correction of the record-of-rights. Notification by the State Government was published in widely daily circulated

papers of the locality, such as, "Amrita Bazar Patrika" and "Ganasakti" Section 17(1) and (4) says that the appropriate Government may direct that the provisions of Section 5A shall not apply for a declaration of urgency made by the State Government which was duly published. In the instant case the notice u/s 9 was issued on June 4, 1996, payment of compensation started on October 1, 1996 and possession was taken on October 1, 1996. So the question of 5 months delay in taking emergency provision had to acquire the land for the purpose of expansion of the Cancer Research Centre and Welfare Home had been duly explained.

9. The writ Petitioner has issued a letter to the secretary of the Respondent No. 6 whereby he disclosed that the secretary of the Respondent No. 6 might obtain a release order of the aforesaid land from the concerned authority and thereafter the sale transaction may take place. Therefore, from this it is unbelievable that he was unaware of such acquisition. The notification dated February 14, 1995, be extrated here below:

Whereas it appears to the Governor that land is likely to be needed to be taken by Government partly at the public expense and partly at the expenses of the Cancer Centre for a public purpose, viz. for expension of Cancer Centre Welfare Home, Thakurpukur, in the mouza Purba Barisha, jurisdiction list No. 23, P.S. Behala, District South 24-Parganas it is hereby notified that for the above purpose a piece of land comprising revisional settlement plots as detailed below and measuring more or less, 1,3314 hectares (3.29 acres), bounded as specified below is likely to be needed within the aforesaid mouza.

This notification is made, under the provisions of Section 4 of Act 1 of 1894, to all whom it may concern.

A plan of the land may be inspected in the office of the Spl. Land Acquisition Officer, South 24-Parganas, Alipore.

In exercise of the powers conferred by the aforesaid section, the Governor is pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen, to enter upon and survey the land and do all other acts required or permitted by that section.

In exercise of the powers conferred by Sub-section (4) of Section 17 of the Land Acquisition Act, 1894, (Act of 1898), the Governor is pleased to direct that the provisions of Section 5A of the Act shall not apply to the lands as described in the Schedule below to which in the opinion of the Governor, the provisions of Sub-section (1) of Section 17 of the said Act are applicable.

10. The secretary of the Respondent. No. 6 filed affidavit-in-opposition by stating inter alia that the Cancer Centre and Welfare Home and Research Institute is a Registered Society under the provisions of the West Bengal Societies" Registration Act, 1961 with an idea for setting up a centre for treatment and prevention of Cancer, a dreadful disease the treatment of which was not

adequate and also beyond the reach of the poor and middle class people. Hon'ble Justice Shankar Prasad Mitra, the former Chief Justice of this Court was the founder President and he continued as such till his death. It was founded by raising donations from its members, private organisations, individual and by raising funds by organising cultural show under Government patronage. Due to the untiring efforts and dedication of the team of doctors and others associated with the Society within a span of 12 years it has emerged as one of the leading Cancer hospitals in the eastern zone. The Cancer Centre is a philanthropic and charitable institution and has been recognised by the Government of India as also the State of West Bengal. The Centre has also been exempted from paying income tax u/s 80G in so far as the donations given to the institution. The Government of West Bengal has also exempted from payment of fees under West Bengal Clinical Establishment Act, 1950. As there was no hospital for treating children afflicted with Cancer, the Respondent No. 6 has, therefore, felt it imperative to open a new project namely the children Cancer centre in or about 1987.

11. With a view to setting up the said children Cancer Centre diligent enquiries were, however, made of the availability of the land of about 10 bigghas. The Respondent No. 6, however, found out that those plots being adjacent to the existing Cancer Centre which was nothing but very low land used only for grazing and feeding catles, therefore, they wrote to the State Government for providing those lands for the said purpose. It was gathered that the West Bengal Housing Board requisitioned the said land but, however, they did not probably take up any housing project there. It was brought to the notice of the Chief Minister to acquire such land by the Respondent no 6 on payment of adequate compensation. By a letter dated May 17, 1994 the authorities conveyed the sanction of the Governor in acquisition of 2.54 acres of land comprising Dag Nos. 3619, 3622(part), 3623, 3624 (part) and 3632 Khatian No. 940 in mouza Purba Barisha, those plots were requisitioned. A notification of Section 4 and Act 1 of 1894 published on March 13, 1995. Subsequent thereto the notification was also published in two important daily newspapers which are widely circulated within the State of West Bengal. By the notification dated May 23, 1995, the State Government stated that the provisions of Section 5A was dispensed with in exercise of their power conferred under Sub-Section 4 of Section 17. As a matter, of fact there is no such Cancer Treatment Centre for children cancer patient in West Bengal. An amount of Rs. 24 lakhs out of 28,80,483.47 which was assessed as tentative estimate in connection with the acquisition of the land had been placed at the disposal of the State Government by Respondent No. 6.

12. By a declaration u/s 6 of the said Act 1 of 1894 published on May 3, 1996, it was stated that the Governor was satisfied that the said plots of land measuring about 3.23 acres were needed for a public purpose for expansion of Cancer Research Centre and Welfare Home. That declaration was also published in two widely circulated newspapers. The possession was delivered to the Respondent No. 6 on October 11, 1996. It is stated that the wife of the Petitioner Archana

Aditya received compensation in October 1996, of an amount of Rs. 69,384.00. The development work on the portion of the land was taken up in or about April and May 1998; by laying down railway track for toy train providing recreation to the children cancer patients. Substantial portion of the said land is still waterlogged being a part of a tank. Because of the order passed by this Court, no further work for railway track could be undertaken. There was a contempt application filed by the writ Petitioner which is also pending before the Court. With these allegations the Respondents No. 6 has claimed to dismiss the writ petition.

13. It is denied that the Respondent No. 1 did not satisfy itself about the urgency as provided in Section 17(1) and (4) of the Act. It has further been denied that the Respondent No. 1 did not apply their mind while publishing the requirement of notification and also for dispensing with Section 5A of the said Act.

14. Mr. Ghosal the learned senior advocate appearing for the writ Petitioner has contended that there was no public purpose for acquiring the disputed land. The Government has a premier cancer institution. Therefore, it appears that there was no necessity nor any plan to expand it rather they had encouraged private institutions. The Respondent No. 6 is building an amusement park of childrens' park. There was no ground to dispense with Section 5A. Opportunity available to the owners, by invoking the emergency procedure u/s 17(1) and (4) of the Act has been shut out. u/s 17(3)(A), compensation amount should be paid to the owner before taking possession but it is strange enough to state that no such offer was even made to the Petitioner before taking such possession. Expansion of cancer hospital may be a public purpose but when there was sufficient time why they did not give a chance to the Petitioner to ventilate his grievance. There was delay between the stage of Section 4 and Section 6 and the State Government does not explain as to why such delay had occurred.

15. Cancer institute is a company u/s 3(e)(ii) of the Act and, therefore, chapter 8 shall be applicable to a company which is other than a society. Therefore, the State Government could not have acquired without observing detailed procedure as envisaged under the Act, therefore, such acquisition is also bad in law.

16. In support of this submission Mr. Ghosal relied upon a judgment in the case of State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, . In the aforesaid judgment it was laid down by the Supreme Court that while exercising discretion by the acquiring authority, it has to be first of all satisfied that such acquisition was necessary for public purpose. If the notification being for acquisition for a company it was necessary to comply with part (vii) of the Act: In this case it is to be considered whether the Respondent No. 6 could be construed as a company" within the meaning of the Act. It is undebatably true that the Respondent No. 6 was registered under Society Registration Act. The main purpose of establishing the Centre is to cater treatment to the cancer patients. This was founded with a philanthropic purpose for treating the cancer patients from middle class and poor

sections of the society. Therefore, it is not a profit earning concern so that it can be regarded as a company. The hospital was founded on charity, magic show, collections from different sections of people. The Government has also contributed nominal amount for the purpose of running the hospital. In this background, this cannot be held that the Respondent No. 6 is a company within the meaning of the Act. The judgment reported in 1965 has no application to this case because facts of that case are entirely distinguishable and different from the facts of the present case. It has to be next found whether the declaration made by the Government as to public purpose of the acquired land can be regarded as colourable, collusive and malafide. In this case the Petitioner has only stated that because on account of delay in between publishing the notification u/s 17(1)(4) and also u/s 6 of the Act, therefore, it is presumably established that there was malafide. In order to arrive at such conclusion several factors are to be taken into consideration. The State Government has regarded the cancer hospital and welfare home as one of the leading public institution of the country and, therefore, has exempted from paying custom duty on account of import of equipments. The Government of India has also exempted the contribution made to the hospital from payment of income tax. It is true that the disputed land along with other lands were acquired by the Housing Department but in view of the fact that cancer hospital was established adjoining the disputed land, the Housing Department was, therefore, reluctant to undertake any project near about the said cancer hospital. The Housing Board had abandoned the land and accordingly it was derequisitioned. The Respondent No. 6 approached the Government after it was derequisitioned for acquiring the same for the purpose of expansion of cancer center and welfare home.

17. It is an undeniable fact that the Government of West Bengal does not have adequate facility for affording cancer treatment to the children. Thus the Government made a token grant of Rs. 10 and allowed the Respondent No. 6 for acquiring the said land by exercising their powers u/s 17(1) and (4) of the Act. The notification was also issued to that effect wherein it was stated that the said acquisition was made in exercise of emergency power. Mr. Mukherjee, the learned advocate appearing for the Respondent No. 6 has relied upon a Division Bench judgment of this Court in the case of Mohan Koiri and Others Vs. State of West Bengal and Others, where it is held:

(i) That the school being the only school in the locality and the cost of the acquisition being partly borne by the Government, the proposed acquisition was for a public purpose;

(ii) that if the opinion is formed by a responsible officer of the Government duly authorised under the rules, his satisfaction would amount to the satisfaction of the Governor as required under the law unless the matter is one requiring his personal satisfaction and unless it is established that the order passed in pursuance of such satisfaction is in excess of powers under the rules or otherwise malafide or an exercise of power for collateral purpose;

(iii) That the general order passed by the Secretary delegation authority to the Deputy Secretary has sanction of the minister-in-charge inasmuch as it was passed under the authority of S.O. No. 5 framed under the Rules of Business.

18. In this case the notification has received the approval of minister-in-charge. It is for the subjective satisfaction of the Government. The cancer hospital is one of the premier hospital of the eastern zone and it was established for noble cause of treating the patient from different sections of the society, namely poor and middle class people. Therefore, the exercise of such power by the State Government cannot be said to be malafide nor it was made with an oblique motive.

19. In a case *Jatadhar Mitra and Others Vs. State of West Bengal and Others*, the question of notification came under challenge. The sole criteria before the Court was that when only a token payment was made by the Government out of the public revenues for the purpose of acquisition of certain land could it be said that it was acquired for public purpose or such proceeding be rendered as colourable or fraud of the statute. The onus of showing such circumstances is on the person who alleged fraud or mala fide. It is not necessary that in every case Government must make a substantial contribution. In the said decision it has further been highlighted that:

Though u/s 6, Sub-section (3) of the Land Acquisition Act, a declaration made u/s 6(1) is conclusive evidence that the land is required for a public purpose, the validity of the entire proceedings can still be challenged on the following grounds: (a) that the proceedings are colourable or in fraud of the statutory power, the real object being to acquire the lands for some "private purpose"; (b) that no part of the compensation money payable by the local authority; and (c) that to a case which attracts "company provisions" under the Act, they have not been applied and complied with.

(1) that the object with which the institution was formed being for establishing educational institutions and for which purpose it needed additional lands, the first contention that no land was needed could not be sustained and (2) that the second aspect, namely, that it was not a popular one was a matter for the Government and not for the Court to determine.

20. Mr. Mukherjee, the learned advocate has strongly contended that in this case merely because there was some official delay therefore, it could not raise a presumption that there was no urgent necessity for acquiring such land. Post facto delay of nearly one year was not by itself sufficient to render the decision taken by the State Government u/s 17(1) and (4) nugatory. In this case he relied upon a judgment of the Supreme Court in the case of *State of Uttar Pradesh v. Pista Devi* AIR 1986 2025 where it is held that:

5. The main ground on which the High Court set aside the impugned notification and the declaration was that the case of urgency put forward by the state Government for dispensing with the compliance with the provisions of Section 5A

of the Act had been belied by the delay of nearly one year that had ensued between the date of the notification u/s 4 and the date of declaration made u/s 6 of the Act. It, however, rejected the contention of the Petitioners based on the delay that had preceded the issue of the notification u/s 4 of the Act. The High Court observed that if the Government were satisfied with the urgency it would have certainly issued declaration u/s 6 of the Act immediately after the issue of the notification u/s 4 of the Act". It found that failure to issue declaration u/s 6 of the Act immediately on the part of the State Government was fatal. That there was delay of nearly one year between the publication of the notification u/s 4(1) of the Act containing the direction dispensing with the compliance with Section 5A of the Act and the date of publication of the declaration issued u/s 6 of the Act is not disputed. It is seen from the record before us that after the publication of the notification u/s 4(1) of the Act, the Collector after going through it found that there were some errors in the notification which needed to be corrected by issuing a corrigendum. Accordingly, he wrote a letter to the State Government on 25-8-1980 pointing out the errors and requesting the State Government to publish a corrigendum immediately. Both the corrigendum and the declaration u/s 6 of the Act were issued on May 1, 1981. It is on account of some error on the part of the officials who were entrusted with the duty of processing of the case at the level of the Secretariat there was a delay of nearly one year between the publication of the notification u/s 4(1) and the publication of the declaration u/s 6 of the Act. The question for consideration is whether in the circumstances of the case it could be said that on account of the mere delay of nearly one year in the publication of the declaration it could be said that the order made by the State Government dispensing with the compliance with Section 5A of the Act at the time of the publication of the notification u/s 4(1) of the Act would stand vitiated in the absence of any other material. In this case there is no allegation of any kind of malafides on the part of either the Government or any of the officers, nor do the Respondent contend that there was no urgent necessity for providing housing accommodation to a large unnumber of people of Meerut city during the relevant time. The letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification u/s 4(1) of the Act clearly demonstrated that at that time there was a great urgency felt by them regarding the provision of housing accommodation at Meerut. The State Government acted upon the said reports, certificates and other material which were before it. In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5A of the Act. Perhaps, at the time to which the decision in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*,) related-the situation might have been that the schemes relating to development

of residential arose in the urban centres were not so urgent and it was not necessary to eliminate the inquiry u/s 5A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not appear to demand such emergency action as to eliminate summary inquiries u/s 5A of the Act. In *Kasiroddy Papaiah v. Govt. of AP*, AIR 1975 AP, Chinnappa Reddy, J. speaking the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus:

That the housing conditions of Harijans all over the country continue to be miserable to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy on discharging of their duties, unless of course it can be established that the acquisition is made with an oblique motive. The pressures of history are not to be undone by the inaction of the bureaucracy. I am trying to make any pontific pronouncement. But I am at great pains to point out the provision for house sites for Harijans is a urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper in the absence of mala fide merely because of the delay on the part of some Government officials.

21. By describing the bold statement of mala fide would not make the decision of the Government bad or mala fide there seems to have been sufficient facts which will help the Court to arrive at the conclusion of mala fide. In this case however, I did not notice detailed facts of mala fide have been narrated. Since the project for construction of children's park for cancer patients was found to be an imperative need for mental development of those patients which might have significantly influenced to the recovery of the patients. In such situation the emergency power seems to have been invoked by the Government by dispensing the provision of Section 5(A) of the Act. Such satisfaction being subject to which the Government on perusal of the material had been able to form an opinion. Therefore, the result of such decision should not be called in question. No interference with such satisfaction can also be called for. In this connection strong reliance was placed upon a judgment of the Supreme Court reported in *Rajasthan Housing Board v. Shri Kishan and Ors.* AIR 1993 S.C. (2)84 where it is held:

14. Shri Thakur argued that the construction of houses by Housing Board is not of such urgency as to call for the invocation of the said power. We are not satisfied. Firstly, on this question the decision of the Rajasthan High Court is

against the writ Petitioners: The learned Single Judge negated it as well as the Division Bench following the opinion of the third Judge. Secondly, we are satisfied that there was material before the Government in this case upon which it could have and did form the requisite opinion that it was a case calling for exercise of power u/s 17(4). The learned Single Judge has referred to the material upon which the Government had formed the said opinion. The material placed before the Court disclosed that the Government found, on due verification, that there was an acute scarcity of land and there was heavy pressure for construction of houses for weaker sections and middle income group people; that the Housing Board had obtained a loan of Rs. 16 crores under a time bound programme to construct and utilise the said amount by March 31, 1983; that in the circumstances the Government was satisfied that unless possession was taken immediately, and the Housing Board permitted to proceed with the construction, the Board will not be able to adhere to the time-bound programme. In addition to the said fact, the Division Bench referred to certain other material also upon which the Government had formed the said satisfaction viz., that in view of the time-bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry u/s 5A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. It must be remembered that the satisfaction u/s 17(4) is a subjective one and that so long as there is material upon which the government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not u/s 17(4) but also generally with respect to subjective satisfaction.

22. Similar question arose before the Apex Court in the case of Bhagat Singh Vs. State of U.P. and Others, . The facts of the above case are exactly similar to the present facts wherein it has been held:

10. In our view, the subjective satisfaction for dispensing with the inquiry u/s 5A is based on sufficient material and cannot be faulted. The photographs as to the filthy state of the Present mandi with garbage and stray cattle and pigs show that the place is so loathsome that it will be precarious and perhaps hazardous to store vegetables or foodgrains in the existing market. We are, therefore, of the view that the urgency clause was rightly invoked by the Government. There are also enough precedents in connection with acquisition of land for markets where Section 5A has been dispensed with and such action was upheld.

23. Mr. Ukil, the Learned Advocate appearing for the State of West Bengal has submitted by producing different records from the Government that the State after perusal of different situation arising from the facts and circumstances of the case and also the various records and also on close scrutiny of various records were of the view that the said acquisition was necessary for public purpose in as much as the State does not have adequate facility for children cancer patients.

The State has, therefore, dispensed with the long term procedure with a view to avoid unnecessary delay by invoking Sections 17(1) and (4). It has been submitted that some delay is bound to occur in Government matters. But that by itself cannot render the decision of the Government mala fide or bad faith. The land acquisition officer could not disturb the fund to the writ Petitioner in as much as his name was not mutated even after purchase. But as a matter of fact the Petitioner's wife has received the compensation in lieu of acquisition of her property with slightest demur. It is, therefore, resumed in such factual backdrop that the so-called abjection raised by the Petitioner is only an afterthought. On perusal of the various records I found the Government had resorted its power to Sections 17(1) and (4) of the Land Acquisition Act in view of the imperative necessity for expansion of cancer centre at Thakurpukur, Behala for an emergency service to the mankind. This has received the minister's approval on April 12, 1994. Once the decision was taken under Sections 17(1) and (4) of the Act, the delay by the Government official shall not render the acquisition bad or mala fide as he has been held in Bhagat Singh" (Supra) case. In fact most of the persons who lost their land by virtue of such acquisition had received their compensation save and except: the Petitioner. His wife had even accepted the compensation amount. In this background, therefore, it cannot be said that the Petitioner was unaware of such acquisition nor any individual notice was given to him. The Respondent No. 6 is not a company so that such provision of the Act could have been invoked. It was only a registered society which batter widely the public need. A decision cited by the Petitioner in the case of Om Prakash v. State of Uttar Pradesh S.C 1998 (6) S.C.C. was based upon State amendment. That acts of that case was entirely different from the facts of the present case. Therefore, the Supreme Court was of the view that emergency power could not have been invoked in the aforesaid circumstance. I feel the above decision shall not be applicable to the present fact.

24. On a careful appraisal of the documents and also various judgments of the Supreme Court as well as this Court I find the emergency power invoked by the State Government does not suffer from any factual or legal vice so that it could be called in question. Accordingly, the writ petition is dismissed but in the circumstances without costs. In view of the judgment passed in the main writ petition I did not find that there is any necessity to make any observation with regard to contempt application filed by the Petitioner which also abided by the result of the writ petition.

25. The writ Petitioner who was the erstwhile owner of about five kathas of land situated in dag No. 3622 Khatian No. 940 J.L. 23 in Purba Barisha Mouza has filed this case for issuing of a writ of mandamus against the Respondents from giving effect to and to give any further effect to the notification dated February 14 1995, annex. "B" and the declaration dated May 2, 1996 and all proceedings thereunder. The detailed factua scenario has already been discussed in case No. 4745(W) of 1998. This has been directed to be taken up along with W.P. No. 16333(W) of 1999. The detail reasonings have been discussed in W.P. No.

4745(W) of 1998 in view of such discussion it appears to be redundant to again repeat the same reasonings in this case.

26. From the narration of the grounds of the writ petition it appears that the Petitioner has not been given her compensation although she is entitled to receive the same. Merely because the name of the Petitioner was not mutated, that by itself shall not preclude the Respondent No. 1 from paying the compensation. The discrete enquiry would have done by him as to the ownership. Therefore, in this background I hereby direct the Respondent No. 1 to calculate the amount of compensation due to be payable to the Petitioners alone with statutory interest within a period of three month from the date and pay the same to them. Save and except the payment of compensation, I do not find any other substantial reason to cancel or set aside the land acquisition made in favour of the Respondent No. 6. Accordingly the writ petition is dismissed.

27. Xerox certified copy of this order be supplied within two weeks from the date of putting requisition for the same.

28. Writ petition dismissed.